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Assistant Commissioner for Patents
Washington, D.C. 20231

On December 13, 2002

TOWNSEND and TOWNSEND and CREW LLP

By: Paula Faurst Hume

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

YOH-ICHI MATSUMOTO et al.

Application No.: 09/700,851

Filed: November 17, 2000

For: HUMANIZED ANTIBODIES
THAT RECOGNIZE VEROTOXIN II
AND CELL LINE PRODUCING SAME

Examiner: Unassigned

Art Unit: Unassigned

COMMUNICATION

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

The response to missing parts filed November 6, 2001, inadvertently failed to include an attachment to the declaration of Masahiko Suzuki. This attachment is provided now.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,

J. Liebeschuetz

Joe Liebeschuetz
Reg. No. 37,505

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PATENT

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CHAPTER III EFFECT OF SUCCESSION

Section 1 General Provisions

(General effect of succession)

Article 896. A successor succeeds, as from the time of the opening of the succession, to all the rights and duties pertaining to the property of the person succeeded to; excepting, however, such as are entirely personal to that person.

(Succession of genealogical records, etc.)

Article 897. Notwithstanding the provisions of the preceding Article, the ownership of genealogical records, of utensils of religious rites and of tombs and burial grounds is succeeded to the person who is, according to custom, to hold as a president the worship to the memory of the ancestors. If, however, the person succeeded to has designated the person who is to hold as a president the worship to the memory of the ancestors, such person shall succeed to that ownership.

2. In cases the custom mentioned in the preceding paragraph is unknown, the person who is to succeed to the right mentioned in the preceding paragraph shall be determined by the Family Court.

(Co-succession)

Article 898. In cases there exist two or more successors the property succeeded to is in their co-ownership.

(Ibid—effect)

Article 899. Each co-successor succeeds to the rights and duties of the person succeeded to in proportion to the share in the succession.

Section 2 Shares in Succession

(Statutory shares in succession)

Article 900. If there exist two or more successors in the same rank, their shares in the succession shall be determined in accordance with the following provisions:

- (1) Where children and the spouse are successors, the shares in the succession of the children shall, in all, be two-thirds, and that of the spouse shall be one-third;
- (2) Where the spouse and lineal ascendants are successors, the share in the succession of the spouse and of the lineal ascendants shall respectively be one half;
- (3) Where the spouse and brothers and sisters are successors, the share in the succession of the spouse shall be two-

BOOK V SUCCESSION

CHAPTER I GENERAL PROVISIONS

(Opening of succession—cause)

Article 882. Succession is opened by reason of death.

(Ibid—place)

Article 883. Succession is opened at the permanent residence of the person to be succeeded to.

(Right to demand recovery of succession)

Article 884. The right to demand recovery of succession shall be extinguished by prescription, if it is not exercised within five years from the time when the successor or the legal representative became aware of the facts constituting a violence of the right of succession. The same shall also apply if twenty years have elapsed from the time of the opening of the succession.

(Expenses relating to succeeded property)

Article 885. Expenses relating to the property succeeded to shall be defrayed out of such property; excepting, however, such as are caused by the negligence of the successor.

2. A person entitled to a legally secured portion cannot be compelled to defray the expenses mentioned in the preceding paragraph out of any property acquired thereby through an abatement of gifts.

CHAPTER II SUCCESSORS

(Capacity of unborn child in respect of succession)

Article 886. A child en ventre sa mere shall, in respect of succession, be deemed to have been already born.

2. The provisions of the preceding paragraph shall not apply in cases where the child en ventre sa mere is born dead.

(Children, succession by representation)

Article 887. Children of a person to be succeeded to become successors.

2. If a child of a person to be succeeded to had died previous to the opening of the succession, or lost the right of succession due to falling under the provision of Article 891 or due to disinheritance, the children of such person become successors by virtue of succession by representation. Provided that this shall not apply to those who are not lineal descendants of the person to be succeeded to.

3. The provision of the preceding paragraph shall apply mutatis mutandis in the case where a successor by representation had died previous to the opening of the succession, or lost the right of suc-

cession by representation due to falling under the provision of Article 891 or due to disinheritance.

Article 888. Deleted.

(Lineal ascendants, brothers and sisters)

Article 889. In cases where there exists no person who is to become successor in accordance with the provision of Article 887, the persons mentioned below become successors in the order as follows:

(I) Lineal ascendants; provided that as between persons standing in different degree of relationship, those nearer in degree are preferred;

(II) Brothers and sisters.

2. The provisions of Article 887 paragraphs 2 and 3 shall apply *mutatis mutandis* in the case mentioned in item (II) of the preceding paragraph.

(Spouse)

Article 890. The spouse of a person succeeded to becomes, in every case, a successor. In this case, if there is any person who is to become a successor in accordance with the provisions of the preceding three Articles, the order of succession of the spouse shall be in the same rank with such person.

(Incapacity for succession)

Article 891. None of the persons mentioned below can become an successor:

- (1) Any person who has been sentenced to punishment for having intentionally caused or attempted to cause the death of the person to be succeeded to, or of any person who has a prior or the same rank with respect to the succession;
- (2) Any person who, knowing that the person to be succeeded to has been killed by homicide, has omitted to give information or to bring a formal charge; excepting, however, cases where such person has no capacity to discern right and wrong, or when the guilty party is the spouse or a lineal relative by blood of such person;
- (3) Any person who has, by fraud or duress, prevented the person to be succeeded to from making, revolving or altering a will relating to the succession;

- (4) Any person who has, by fraud or duress, induced the person to be succeeded to make, revoke or alter a will relating to the succession;
- (5) Any person who has forged, altered, destroyed or concealed a will of the person to be succeeded to relating to the succession.

(Disinheritance of presumptive successor)

Article 892. In cases a presumptive successor who is entitled to a legally secured portion has treated the person to be succeeded to with cruelty or has offered a gross insult, or in cases a presumptive successor has been guilty of any other gross misconduct, the latter may apply to the Family Court for the disinheritance of such presumptive successor.

(Ibid—by will)

Article 893. In cases a person to be succeeded to has declared by will the intention to disinherit the presumptive successor, the executor of will shall apply to the Family Court for the disinheritance without delay after the will has become effective. In this case, the disinheritance shall be effective retroactively as from the time of the death of the person succeeded to.

(Ibid—revocation)

Article 894. A person to be succeeded to may at any time apply to the Family Court for the revocation of the disinheritance of a presumptive successor.

2. The provisions of the preceding Article shall apply mutatis mutandis to revocation of disinheritance.

(Opening of succession before disinheritance becoming final and conclusive)

Article 895. If succession is opened after an application has been made for the disinheritance of a presumptive successor or for the revocation thereof, but before the decision on such application has become final and conclusive, the Family Court may, on the application of any relative or any person interested, or of a public procurator, order such disposition as may be necessary for the management of the estate. The same shall also apply when there exists a will disinheriting a successor.

2. In cases where the Family Court has appointed an administrator, the provisions of Articles 27 to 29 inclusive shall apply mutatis mutandis.

thirds and those of the brothers and sisters shall be one-third;

- (4) Where there exist two or more children, or lineal ascendants, or brothers and sisters, their respective shares in the succession shall be equal. However, the share in the succession of a child who is not legitimate shall be one half of that of a legitimate child, and the share in the succession of any of the brothers and sisters whose father or mother alone is the same with that of person succeeded to, shall be one half of the share of any of the brothers and sisters whose father and mother both are the same with those of the person succeeded to.

(Ibid—share in succession by representation)

Article 901. The share in the succession of a lineal descendant who is a successor in accordance with the provisions of Article 887 paragraph 2 or 3 shall be the same as that which would have been received by his lineal ascendant; however, in cases there exist two or more lineal descendants their shares in the succession shall, in respect of the share which would have been received by the lineal ascendant of each of them, be determined in accordance with the provisions of the preceding Article.

2. The provisions of the preceding paragraph shall apply mutatis mutandis in cases where a lineal descendant of brothers and sisters is a successor in accordance with the provisions of Article 889 paragraph 2.

(Designated share in succession)

Article 902. A person to be succeeded to may, notwithstanding the provisions of the preceding two Articles, determine by will the shares of co-successors or commission a third person to determine the same; however, neither the person to be succeeded to nor the third person may contravene the provisions relating to legally secured portions.

2. In cases a person to be succeeded to has determined or caused to be determined the share of only one or several successors, the share of the other co-successors shall be determined in accordance with the provisions of the preceding two Articles.

(Share in succession of co-successor who received gift)

Article 903. In cases any of the co-successors has received from the person to be succeeded to a testamentary gift, or a gift for the purpose of marriage, adoption, or as a means of livelihood, the value of the property owned by the person to be succeeded to at the time of the opening of the succession plus the

7 借財権持人から相続財産につき権利を取得した
(大判大5・2・8民登二二・二六七)

一 相続人 相続人は、遺言分割または、相続開始時に存在した金額を相続財産として受領している他の相続人に対して、自己の相続分に相当する金額の支払を受けることはできない。(昭和四〇・八・一六 最高裁判所第三八二二)

二 可分債権 相続財産中の可分債権は法律上当然に分割され、各共同相続人がその相続分に按じて権利を承継する。(昭和四〇・八・一六 最高裁判所第三八二二 四二七七七)

三 可分債権・遺言債務 遺言債務者の一人が死亡し、その相続人が数人ある場合には、相続人らは被相続人の債務の分割されたものを承継し、各自その承継した範囲において、本来の債務者と共に遺言債務者となる。(昭和四〇・六・一四 最高裁判所第三六二五七 最高裁判所第三八二二 四二七七七 四三二二)

四 可分債権・遺言の支払 四二七七七

五 不可分債権とされた例 四三〇九

第二節 相続分

第九〇〇条(法定相続分) 同順位の相続人が数人あるときは、その相続分は、左の規定に従う。

一 その相続分は、左の規定に従う。

二 配偶者の相続分は、全二分の一とする。(昭和五五・五・一〇 昭五五五五一本改正)

三 配偶者及び直系尊属が相続人であるときは、配偶者の相続分は、三分の二とし、直系尊属の相続分は、三分の一とする。(昭和五五・五・一〇 昭五五五五一本改正)

四 配偶者及び兄弟姉妹が相続人であるときは、配偶者の相続分は、四分の三とし、兄弟姉妹の相続分は、四分の一とする。(昭和五五・五・一〇 昭五五五五一本改正)

五 直系尊属又は兄弟姉妹が数人あるときは、各自の相続分は、相等しいものとする。但し、嫡出でない子の相続分は、嫡出である子の相続分の二分の一とし、父母の一方のみを同じくする兄弟姉妹の相続分は、父母の双方を同じくする兄弟姉妹の相続分の二分の一とする。(昭和五五・五・一〇 昭五五五五一本改正)

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第九〇一条(代位相続分) ① 第八百八十七条第二項又は第三項の規定によつて相続人となる直系尊属の相続分は、その直系尊属が受けるべきであつたものと同一である。但し、直系尊属が数人あるときは、その各自の直系尊属が受けるべきであつた部分について、前条の規定に従つてその相続分を定める。(昭和五五・五・一〇 昭五五五五一本改正)

② 前項の規定は、第八百八十九条第二項の規定によつて兄弟姉妹の子が相続人となる場合にこれを準用する。(昭和五五・五・一〇 昭五五五五一本改正)

第九〇二条(指定相続分) ① 被相続人は、前二条の規定にかかわらず、遺言で、共同相続人の相続分を定め、又はこ

れを定めることを第三者に委託することができ、但し、被相続人又は第三者は、遺言分に関する規定に違反することではない。

② 被相続人が、共同相続人中の一人若しくは数人の相続分のみを定め、又はこれを定めさせたとときは、他の共同相続人の相続分は、前二条の規定によつてこれを定める。

第九〇三条(特別受益者の相続分) ① 共同相続人中に、被相続人から、遺言を受け、又は贈與、親子縁組のたがひ若しくは生計の資本として贈与を受けた者があるときは、被相続人が相続開始の時に所有した財産の価額にその贈与の価額を加えたものを相続財産とみなし、前二条の規定によつて算定した相続分の中からその遺言又は贈与の価額を控除し、その残額を以てその者の相続分とする。

② 遺言又は贈与の価額が、相続分の価額に等しく、又はこれを超えるときは、受遺者又は受贈者は、その相続分を受けることができない。

③ 被相続人が前二項の規定を以てした意思を表示したときは、その意思表示は、遺言分に関する規定に反しない範囲内で、その効力を有する。

第九〇四条(特別受益者の相続分) ① 共同相続人中に、被相続人から、遺言を受け、又は贈與、親子縁組のたがひ若しくは生計の資本として贈与を受けた者があるときは、被相続人が相続開始の時に所有した財産の価額にその贈与の価額を加えたものを相続財産とみなし、前二条の規定によつて算定した相続分の中からその遺言又は贈与の価額を控除し、その残額を以てその者の相続分とする。

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一 生存保険金 ① 相続開始時に存在した金額を相続財産として受領している他の相続人に対して、自己の相続分に相当する金額の支払を受けることはできない。(昭和四〇・八・一六 最高裁判所第三八二二)

② 生存保険金受取権の相続人が遺言に指定した範囲があるにせよ、これを特別受益に当たるとする見解を採用することはない。(昭和五五・五・一〇 昭五五五五一本改正)

二 死亡退職金 ① 死亡退職金は、国家公務員退職金法に基づき、支給対象者の遺族に対して支給されるが、共同相続人間の遺族がその遺族からすると特別受益になる。(昭和五五・五・一〇 昭五五五五一本改正)

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② 遺言又は贈与の価額が、相続分の価額に等しく、又はこれを超えるときは、受遺者又は受贈者は、その相続分を受けることができない。

③ 被相続人が前二項の規定を以てした意思を表示したときは、その意思表示は、遺言分に関する規定に反しない範囲内で、その効力を有する。

第九〇五条(相続分取戻) ① 共同相続人の一人が分割前にその相続分を第三者に譲り渡したときは、他の共同相続人は、その価額及び費用を償還して、その相続分を譲り受けることができる。

② 前項に定める権利は、一個月以内にこれを行使しなければならない。

第九〇六条(分割の請求) ① 共同相続人の一人が分割前にその相続分を第三者に譲り渡したときは、他の共同相続人は、その価額及び費用を償還して、その相続分を譲り受けることができる。

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